

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARIA GUZMAN MORALES &
MAURICIO R. GUAJARDO, &
On behalf of themselves and all other
similarly situated individuals,

Plaintiffs,

CASE NO. 8:08-cv-504

V.

FARMLAND FOODS, INC., a Delaware Corporation and subsidiary of Smithfield Foods,

Defendant.

JOINT SUBMISSION ON CLASS NOTICE

Pursuant to the Court’s September 4, 2009 Order (*see* Filing No. 81), the parties provide this joint submission on class notice. Following discussion, the parties have agreed on the content and language of the proposed class notice, which is attached hereto as Exhibit A. The parties have also agreed on the vast majority of the content and language of the opt-in consent form. Attached hereto as Exhibit B is a copy of the proposed opt-in consent form agreed to by both parties with the disputed language underlined and in blue font. Plaintiffs oppose the inclusion of the blue underlined language, and Defendant desires the inclusion of such language. The parties submit the following arguments on the disputed language in the opt-in consent form:

**I. PLAINTIFFS' ARGUMENT IN OPPOSITION TO INCLUSION OF
DEFENDANT'S PROPOSED LANGUAGE IN THE OPT-IN CONSENT FORM**

Plaintiffs object to the proposal by Defendant to require class members to include the last four digits of their Social Security Numbers (“SSNs”) on the Consent to Join forms, for several reasons. First, Defendant is already in possession of the SSNs for class members. Second, neither party has a need for the SSNs given that class members already must include their

addresses, telephone numbers and names on the Consent to Join Forms. Third, by asking for such sensitive information, Defendant's proposal seems calculated to intimidate recent immigrant class members and discourage them from participating in this lawsuit based upon fear of retribution regarding their immigration status; such behavior is frowned upon by the courts. *See Singh v. Jutla & C.D. & R's Oil, Inc.*, 214 F.Supp.2d 1056, 1059-1060 (N.D.Cal. 2002) ("an illegal employee would also have standing to bring an anti-retaliation claim under the FLSA for protected FLSA conduct" as a result of "the retaliatory act of reporting an undocumented worker's immigration status to the INS."); *Contreras v. Corinthian Vigor Ins. Brokers, Inc.*, 25 F.Supp.2d 1053, 1058 (N.D.Cal. 1998) (same). Fourth, immigration status has nothing to do with the rights guaranteed under the Fair Labor Standards Act, and should not be introduced as a factor in whether class members wish to exercise their rights under the FLSA. *See Patel v. Quality Inn South*, 846 F.2d 700, 706 (11th Cir. 1988) ("Nothing in the FLSA suggests that undocumented aliens cannot recover unpaid minimum wages and overtime under the act, and we can conceive of no other reason to adopt such a rule. We therefore conclude that Patel is entitled to the full range of available remedies under the FLSA without regard to his immigration status."); *In re Reyes*, 814 F.2d 168, 170 (5th Cir. 1987) ("[I]t is well established that the protections of the Fair Labor Standards Act are applicable to citizens and aliens alike and whether the alien is documented or undocumented is irrelevant. An employee is 'any individual employed by an employer.'").

II. DEFENDANT'S ARGUMENT IN SUPPORT OF INCLUSION OF ITS PROPOSED LANGUAGE IN THE OPT-IN CONSENT FORM

Defendant respectfully requests the Court to include a place on the opt-in consent form for opt-in plaintiffs to fill in the last four digits of their social security number. The purpose of requesting such information is to simplify the identification of opt-in plaintiffs. There are a

number of current and former employees at the Crete, Nebraska plant with the same name or same birth date. Inclusion of the last four digits of a social security number will make it easier for Farmland to identify an opt-in plaintiff where the handwriting on the opt-in consent form makes the name difficult to read or where employees with similar names also have similar birth dates. Defendant recognizes that social security numbers are sensitive personal information, which is why, using NECivR 5.3(a) as a guide, it proposes asking for only the last four digits of the social security number.¹

Plaintiff argues that Defendant seeks to require social security numbers for the purposes of retaliating against potential plaintiffs or deterring them from opting in. This is simply not the case. Social security numbers are the most effective way to identify accurately the opt-in plaintiffs. Defendant already requires all of its employees at the Crete plant to provide a valid social security number for purposes of complying with its employment tax obligations. Furthermore, though Defendant continues to deny the validity of Plaintiffs' claims and asserts that it has complied with the Fair Labor Standards Act, in the event that at a later stage in the litigation the parties enter into a settlement agreement or the Court awards damages to Plaintiffs, social security numbers would be needed for verification and tax purposes. Moreover, other courts have included on their FLSA opt-in forms a place for putative plaintiffs to include their social security numbers. The court in *Garcia v. Elite Labor Service, Ltd.*, explained:

This Court agrees with [temp agency defendant] that the social security numbers, date of birth and phone number at the time they were employed at [defendant] should be supplied [in the FLSA opt-in form]. As argued by [defendant] this will enable [defendant] to track the work and payment history of each worker. This is necessary information because [defendant] had thousands of temporary workers for short periods of time many of whom had identical or similar names. Thus, the

¹ Defendant also proposed to Plaintiffs that the opt-in form only request the plaintiffs' year of birth so that Plaintiffs' counsel would not have to redact all of the birth dates, pursuant to NECivR 5.3(a), before filing the consent forms. However, Plaintiffs' counsel indicated that they would prefer to have the opt-ins fill in their complete date of birth and will file a redacted copy but produce to Defendant's counsel an unredacted copy.

form should be modified to provide for this information.

No. 95 C 2341, 1996 WL 33500122, at *6 (N.D. Ill. July 11, 1996); *see also Gjurovich v.*

Emmanuel's Marketplace, Inc., 282 F.Supp.2d 91, 100 (S.D. N.Y. 2003); Exhibit C, opt-in form

used in *Chavez v. IBP, inc.*, No. CT-01-5093-RHW, 2005 WL 6304840 (E.D. Wash. May 16,

2005). Therefore, to facilitate the identification and verification of each opt-in plaintiff,

Defendant respectfully asks that the opt-in consent form include a place for the putative plaintiff

to fill in the last four numbers of his or her social security number.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2009, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which sent notification of such filing to the following:

Carolyn H. Cottrell
Christopher P. Welsh
James R. Welsh
Jonathan D. Berger
Russell D. Henkin
Philip A. Downey
Shanon J. Carson
Todd M. Schneider
W. Hank Willson, IV

I hereby certify also that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

None.

s/Allison D. Balus_____